

(1976) 08 KL CK 0009
In the High Court Of Kerala
Case No : A.S. No. 515 of 1972

Sahithya Pravarthaka Co-operative Society Ltd.	APPELLANT
Vs	
Kamalalaya Printing Works and Book Depot and Another	RESPONDENT

Date of Decision : 26-08-1976

Acts Referred:

Copyright Act, 1957 — Section 14, 16, 16, 19(7), 19(8)
General Clauses Act, 1897 — Section 6
States Adaptation of Laws Act, 1951 — Section 6
Travancore Copyright Act, 1092 — Section 23, 23(1), 8
Travancore-Cochin Co-operative Societies Act, 1951 — Section 6

Citation : (1976) 08 KL CK 0009

Hon'ble Judges : T. Chandrasekhara Menon, J;R.Bhaskaran, J

Bench : Division Bench

Advocate : T.K. Kurien, for the Appellant; V. Vyasani Poti and M.R. Parameswaram for 1st Respondent and K. Sudhakaran, K.K. Babu and V.R. Ramachandran for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Chandrasekhara Menon, J.—Alleged infringement of copyrights over four well-known works of late Professor A.R. Raja Raja Varma, one of the tallest figures in Malayalam literature said to be vested in the Respondents-Plaintiffs, is the subject matter of this litigation, which has come to this Court by way of appeal from the judgment and decree of the Trivandrum District Court in O.S. No. 8 of 1968 of that court. The decree passed is in the nature of a preliminary one, wherein it is declared that the Plaintiffs are entitled to get damages from the Defendants, the quantum to be determined at the time of passing of the final decree. The Plaintiffs' entitlement to such damages is for the period from 18th June 1968 when the Defendants first published the books concerned, up to 1st January 1969, the date up to which the copyrights over the books subsisted in the Plaintiffs in accordance with the provisions of the Indian Copyright Act of 1957. The Defendants have been directed to produce their accounts for the

period for audit to ascertain the amounts realised by them by the sale of the books for the purpose of fixing up the quantum of damages which the Plaintiffs are to get. The Plaintiffs' prayer in the suit for a decree for perpetual injunction for restraining the Defendants from making, printing, publishing or selling any reproduced copies of the books, has been refused by the District Judge on the ground that the Plaintiffs' copyright in respect of those four books have ceased to exist from 1st January 1969.

2. The Plaintiffs in the suit are (1) the sole proprietrix of the Kamalalaya Printing Works at Trivandrum, and (2) her husband and general power of attorney holder who manages the press and the book depot. The Defendants are the well-known Sahitya Pravarthaka Co-operative Society Ltd. of Kottayam and its publishing concern the National Book Stall -- N.B.S.

3. According to the plaint allegations, Professor Raja Raja Varma had assigned the copyrights of all his works in existence then and to be written, on 6th Kanni 1088 M.E. to one Sri K.S. Raman Menon, a gentleman from Ottapalam in the erstwhile Malabar District settled down at Trivandrum and running a publishing house and a press of some renown in those days -- B.V. Book Depot and the Kamalalaya Printing Works. The copyrights were registered under the existing law in Travancore.

4. We are concerned in this case with four books of Sri Raja Raja Varma -- (1) Bhasha Bhooshanam, first published in May 1908; (2) Vriitha Manjari, first published in September 1904; (3) Malayala Sakunthalam, first published in July 1912; and (4) Swapna Vasavadatha, first published in April 1918. Sri Raman Menon bequeathed all his rights in the properties as per a registered Will No. 31 of 1918. He died in 1100 M.E. (1924-25). The Plaintiffs' case is that as per the provisions of the Will all his copyrights and business including B.V. Book Depot and Kamalalaya Printing Works, devolved on his wife and 3 sons among his Makkathayam heirs and 3 of the Marumakkathayam heirs. By a subsequent udampadi No. 2901 dated 20th Meenam 1106 it is alleged that the assets so bequeathed were divided by metes and bounds. The Makkathayam heirs are alleged to have taken the B.V. Book Depot together with the copyrights of certain publications specifically mentioned in that document leaving and relinquishing all their rights in the copyrights over the remaining publications which Raman Menon had including the books specified in the plaint in favour of the 1st Plaintiff's brother Sankara Menon, one of the Marumakkathayam heirs mentioned in Raman Menon's Will. It is the further case of the Plaintiffs that the rights of Marumakkathayam heirs finally vested in the 1st Plaintiff by means of various documents. It is asserted in the plaint that the 1st Plaintiff is the owner of the copyrights over the books concerned and no one else has any copyright over them. This fact has been specifically stated in the editions brought out by the 1st Plaintiff of these books.

5. The author of the books, Professor Raja Raja Varma, had died on 18th June 1918. In accordance with the provisions contained in Sections 22 and 29 of the

Indian Copyright Act, 1957, the copyright over the works of Professor Raja Raja Varma existed till 1st January 1969, and consequently no one else is entitled to make, print, publish or sell or do any act in infringement of the 1st Plaintiff's copyright over the plaint schedule books up to that date. It is the Plaintiffs' case that the 1st Defendant which is a co-operative society registered under the Travancore-Cochin Co-operative Societies Act and the 2nd Defendant which is the sole selling agent of the 1st Defendant of their books with the malicious intention of earning illegal gains, began making, printing, publishing and selling reproduced copies of the 4 works in 1968. These copies were put up for sale on the 18th of June 1968 in a public function held at the University College, Trivandrum. Therefore, the Plaintiffs brought forward the suit.

6. On behalf of the 1st Defendant a written statement has been filed by the then Secretary of the Society. It is pointed out in the written statement that the 2nd Defendant is only one of the departments functioning under the 1st Defendant society and its activities and working are fully controlled and directed by the 1st Defendant society. Therefore, it is alleged that the 2nd Defendant is an unnecessary party to the cause. According to the 1st Defendant late Raman Menon had neither acquired nor possessed the copyright for the plaint schedule books. The alleged assignment of the copyrights by Sri Raja Raja Varma in favour of Raman Menon is denied. It is the case of the society that neither Raman Menon nor his heirs had any legal right to make any kind of transactions or otherwise deal with any right involving the plaint schedule books. Therefore, it is averred that the Plaintiffs have not acquired copyrights over the plaint schedule books either on facts or in law. The Plaintiffs do not possess any subsisting copyright as to entitle them to institute the suit. It is alleged in the written statement that none of the provisions of the Indian Copyright Act, Act 14 of 1957 is applicable to the facts of the case. It is said that it is wrong to say that the copyrights over the books subsisted until the 1st day of January 1969. It is pointed out in the written statement that u/s 8 read with Section 23 of the Travancore Copyright Regulation No. XIII of 1092, the copyright even if created in favour of anybody, whatever be the terms of the agreement, will revert to the legal heirs of the author 25 years after the demise of the author. As Professor Raja Raja Varma died in 1918, the 1st Defendant contends that the copyrights over the books should be deemed to have been reverted to his legal heirs in 1943. The Act of 1957 cannot revive in favour of anybody copyrights which had been reverted to the legal heirs of the owner under the Travancore Copyright Law. On this basis it is said in the written statement that the Plaintiffs could not have subsisting copyright over the books nor can they claim any benefits or right under the Act of 1957. It is said that the 1st Defendant bona fide and honestly believes that the Plaintiffs never had copyrights over the plaint schedule books and therefore no question of infringement of such copyrights arises. The Defendants are said to have published the works because the books written by late Sri A.R. Raja Raja Varma are classics in Malayalam Literature and necessarily they should be made available to the reading public. Therefore, there was no

malafide intention on the part of the Defendants as alleged in the plaint.

7. The trial court after a detailed discussion of the evidence in the case and after referring to the law on the point held in favour of the Plaintiffs as regards the existence of the copyrights in their favour at the time of filing the suit. But it was pointed out that the copyrights over these books expired under the provisions of the Indian Act on 1st January 1969. Therefore, moulding the reliefs in the light of that the District Court passed a decree, details of which have been referred to earlier. The 1st Defendant has, therefore, come in appeal.

8. The main contention in the appeal is that the court below erred in finding that the Indian Copyright Act of 1957 applied to the case. According to the Appellant, the copyrights in question were governed by the Travancore Copyright Act, Act VIII of 1092. It is alleged that the District Judge seriously erred in assuming that by the introduction of Indian Copyright Act of 1914 in Part B States by the Adaptation of Laws Act 1951, the period of duration of the then subsisting copyrights under the existing law was extended or altered. It is pointed out that the trial court ignored the provisions of Section 6 of Part B States Adaptation of Laws Act. The further argument is that the provisions of the Indian Copyright Act of 1914 and 1957 were applicable only to copyrights which came into existence after 1st January 1957. They have no retrospective operation. According to the Appellant the copyright in question subsisted only up to 17th June 1968 u/s 6 of the Travancore Act irrespective of the question whether there was any assignment or not. Exactly 50 years after the death of the author copyright in his work ceased to exist and thereafter any person interested had the liberty to reproduce the work. So runs the argument. In regard to the facts of the case the Appellant attacks the finding of the court below that there was assignment of the copyrights in favour of Raman Menon. Also according to the Appellant there was absolutely no evidence to show that the first Plaintiff had in any case obtained the rights of the copyrights of the plaint schedule books. It is urged that it was significant that none of the documents produced by the Plaintiffs referred to the copyrights of the books concerned. The society strongly contends that the burden of proof being heavy on the Plaintiffs in the light of the facts brought out they have to be non-suited, as they have hopelessly failed to discharge that burden. The fact that no one else claimed the right or that the Plaintiffs were carrying on the publication of the books was no proof of the Plaintiffs' legal right.

9. We will first deal with the question whether in fact there had been an assignment of the copyrights over the books concerned in Raman Menon's favour which finally vested in the 1st Plaintiff, as contended in the plaint. Ext. P-30(a) is a letter addressed to Sri Raman Menon by late Professor Raja Raja Varma which reads thus:

(***)

P.W.2 the son of late Raja Raja Varma and who is himself a retired Professor of English in the University College, states that Ext. P-30(a) is a letter written by his

father and it deals with the assignment of copyrights in respect of the books including the books concerned written by his father. In the memo issued from the Chief Secretary to Government of Travancore to Sri Raman Menon dated 13th December 1910, marked as Ext. P-7 in the case it is stated that with respect to Mr. Raman Menon's application dated 15th Thualm 1086 copyrights in respect of the publications mentioned therein including Vritha Manjari and Bhasha Bhooshanam have been registered in the name of K.S. Raman Menon. In Ext. P-8, Anr. memo issued from the Chief Secretary dated 12th October 1912 it is stated that the copyrights in respect of publications including Malayala Sakunthalam have been registered in K.S. Raman Menon's name. A greetings sent to Kamalalaya Printing Works by the late Poet Vallathol dated 11th January 1954 refers to Mr. Raman Menon as holding the copyrights of the works of late Raja Raja Varma. We find also in the books published by the Plaintiffs, Bhasha Bhooshanam published in 1902, Vritha Manjari in 1904, Malayala Sakunthalam in 1912 and Swapna Vasavadatham in 1918, it had been printed that the copyrights in the books are reserved to Kamalalaya Book Depot.

10. Copy of the Will executed by Raman Menon is marked as Ext. P-30(b) = Ext. P-14 in the case. In the Will what is stated is that whatever assets owned by the testator (K.S. Raman Menon) is being dealt with there in. It is true that there is no specific mention of the copyrights owned by Raman Menon there. The reference therein only is to (***) . It was strongly contended on behalf of the Appellants that this will not take in copyrights. We do not agree. Copyright is not the mere creature of statute, but a natural and civil right, though under the present Act it is made a creature of statute. As Erle, J., said in *Jefferys v. Boosey* (1854) 4 H.L.C. 815, 868.

.... the claim (of copyright) is not to ideas, but to the order or words, and that this order has a marked identity and a permanent endurance. Not only are the words chosen by a superior mind peculiar to itself, but, in ordinary life, no two descriptions of the same fact will be in the same words, and no two answers to your Lordships' questions will be the same. The order of each men's words is as singular as his countenance, and although if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenance that could not be discriminated. The permanent endurance of words is obvious, by comparing the words of ancient authors with other works of their day; the vigour of their words is unabated; the other works have mostly perished. It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property....

No doubt it is incorporeal property distinguishable from the physical ownership of the work in which copyright subsists. This is a right to make copies of the work, to publish the work and to do various other acts. What are the properties which Raman Menon wanted to convey we have to find out from the words of the Will read as a whole. There cannot be any doubt that the testator had intended to

take-in properties of all kinds which naturally includes copyright rights in his favour. In considering documents we will have to take into account the limitations of the language in which the document is written.

11. Ext. P-31 is a copy of an udampady executed by the wife and children of Raman Menon in favour of one of the Marumakkathayam heirs of Raman Menon, Sankara Menon, who is described as proprietor of the Kamalalaya Printing Works and Book Depot. There reference is made to the Will of the deceased Raman Menon, whose assets are said to be in the management of the said Sankara Menon as per the provisions of the Will and the udampady is said to be executed consequent on the settlement effected on the demand by the executants of the document for handing over the properties they should get as per the Will. The document mentions that it has been agreed that the name of B.V. Book Depot will be used for their book depot and Kamalalaya Printing Works will be the name of the press which the Marumakkthayam heirs take. The books in respect of which the Makkathayam heirs will have the copyrights are specified in B schedule to the document. It is also mentioned in the Udampady that the books in B schedule will be published by the executants but they will have no right in respect of the books over which the Marumakkathayam heirs have got the right. Plaintiffs have also produced Ext. P-15, Ext. P-16 and Ext. P-17, deeds executed by various Marumakkathayam heirs of Raman Menon in favour of the 1st Plaintiff. These documents are in the nature of relinquishment deeds (Ext. P-15 takes the form of a sale) by which the executors relinquished their rights in respect of the Kamalalaya Printing Works and the books published from therein in favour of the 1st Plaintiff. As stated earlier, one finds also in the books published by the Kamalalaya Printing Works admittedly now in the possession of the Plaintiffs, including those, copyrights in respect of which are concerned in this proceedings, it had been specifically stated that the copyright is reserved to the publishers. From these we have no hesitation in upholding the finding of the court below that the copyrights of the four books -- Bhasha Bhooshanam, Vritha Manjari, Malayala Sakunthalam and Swapna Vasavadatham -- had been assigned to Raman Menon and such rights are now vested in the 1st Plaintiff. The Plaintiffs are, therefore, entitled to claim themselves as owing the copyrights in respect of the plaint schedule books.

12. The next is the more important contention that has been raised by the Appellant. According to them, the Indian Act of 1957 would not govern the case. It is to be determined by the Travancore Act and in the light of the provisions of that Act the Plaintiffs had no subsisting right of the copyrights at the time of the institution of the suit. The first statute which regulated the law of copyrights in the erstwhile Travancore area was Regulation II of 1039, which was based on the British Indian Act XX of 1847. Clause 1 of the said regulation enacted that the copyright in every book published in Travancore shall endure for 42 years from the date of its first publication and shall be the property of the author of the book, his heirs or assigns. A book of registry of copyright and of its transfer shall be kept in the Dewan's office under his signature, and this book shall be open to

the inspection of such parties as apply to the Dewan's English Secretary. It had been provided in that regulation that if any person after the passing of the regulation shall print or cause to be printed either for sale or exportation, any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire, any such books so unlawfully printed without such consent as aforesaid, such offender, if the offence be committed in the limits of Travancore, shall be liable to action for damages in civil court. Regulation II of 1039 was repealed by Regulation VIII of 1092 (subsequently termed as Act VIII of 1092). The subsequent Act was drafted on the lines of the English Act as modified by the Indian Copyright Act, III of 1914. Section 6 of the said Act stated that the term for which copyright shall subsist shall except as otherwise expressly provided by regulation be the life of the author and a period of fifty years after his death. Section 23 of the said statute provides as follows:

23. (1) Where any person is immediately before the commencement of this Regulation entitled to any copyright in any work under Regulation II of 1039, or to any interest in such right, he shall, as from that date, be entitled to the copyright as defined in this regulation, or to the same interest in such right and to no other right or interest, and such right shall subsist for the term for which it would have subsisted if this Regulation had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that:

(a) if the author of any work in which any copyright under Regulation II of 1039 subsists at the commencement of this Regulation has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Regulation, the right would have expired, the right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Regulation and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either:

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration in accordance with the law for the time being in force in Travancore; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration in accordance with the law for the time being in force in Travancore, or, where the work is incorporated in a collective work and the owner

of the right or interest is the proprietor of that collective work, without any such payment:

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post or Anchal to the author, or, if he cannot with reasonable diligence be found, advertised in our Government Gazette;

(b) Where any person has, before the date on which this Regulation comes into force, takes any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Regulation, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration in accordance with the law for the time being in force in Travancore.

(2) For the purposes of this section, the expression "author" includes the legal representatives of a deceased author.

(3) Subject to the provisions of Section 19, Sub-sections (7) and (8), copyright shall not subsist in "any work made before the commencement of this Regulation, otherwise than under, and in accordance with, the provisions of this section.

After the coming into force of the Part B States Adaptation of Laws Act, 1951 after independence, Copyright Law began to be governed by Central Act III of 1914, but the provisions in the same were similar to the Travancore Act referred to earlier. The Indian Copyright Act, 1957 repealed the Indian Copyright Act, 1914. Section 16 of the new Act provides as follows:

16. No copyright except as provided in this Act. No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction a breach of trust or confidence.

Another relevant provision to be taken into consideration is Section 22 of the Act, which runs as follows:

22. Term of copyright in published literary, dramatic, musical and artistic works.
-- Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation. -- In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Note the underlined words which effects a change in the law regarding the duration of the copyright. If Section 22 of the Act is applicable in the present case, Plaintiffs can claim copyright over Professor Raja Raja Varma's works up to 1st January 1969, though on 18th June 1968 fifty years had expired from the date of death of the professor. Section 79 is the repealing provision, which reads:

79. Repeals, savings and transitional provision. -- (1) The Indian Copyright Act, 1914 and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914, are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this Act becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by Sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in Section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such right shall be --

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignees or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by Sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before

its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897, with respect to the effect of repeals.

The question is whether the provisions of the new Act are applicable in the instant case. We are of opinion that the new Act is applicable as has been held by the lower court. The decree impugned in this appeal will have to be confirmed. Mr. T.K. Kurien, learned Counsel for the Appellant laying stress on Sub-clause (5) of Section 79 states that Act III of 1914 is the Act that would be applicable and therefore from 18th June 1969 the Plaintiffs copyrights in regard to the books has ceased to subsist. We have to read the section as a whole. Sub-section (3) provides for a case where copyright did not subsist in any work immediately before the commencement of the Act under any Act repealed by Sub-section (1). Sub-section (4) provides for a case where copyright subsisted in any work immediately before the commencement of the new Act. In such a case the rights comprising such copyright shall, as from the date of such commencement (1) be the rights specified in Section 14 of the Act in relation to the class of works to which such work belongs and (2) where any new rights are conferred by that section, the owner of such rights shall be -- (a) the assignee or his successor-interest, in case the copyright in the work was wholly assigned before the commencement of the Act; (b) the person who was the first owner of the copyright in the work under any Act repealed by Sub-section (1) or his legal representatives in any other case, that is, in cases where there was no assignment or it was partial. Sub-section (5) provides that where any person is entitled, before the commencement of the Act to, (a) copyright in any work or (b) any right in such copyright or (c) to an interest in such right, he shall, except as otherwise provided in the Act, continue to be entitled to such right or interest for the period for which he would have been entitled thereto if the Act had not come into force. It might be noted that Section 16 of the Act provides that no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of the Act or of any other law for the time being in force. In view of that section, this sub-section makes special provision with regard to the work or any right which were entitled to protection on the date when the Act came into force. The crucial date is the date of commencement of the Act. Sub-section (5) is therefore by way of protection of rights which existed under the previous Act, but which would not continue to exist under the new Act, but for the sub-section. Therefore, in regard to the rights under the old Act which were subsisting at the time of the commencement of the new Act and which would be "rights" under the new Act also the provisions of the new Act would apply. In this view of the matter the lower court's decision is correct.

13. It might be noted that Section 6 of the General Clauses Act, 1897 provides

as follows:

6. Where this Act, or any Central Act or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

14. The object of this section is to clearly state the effect of repeal of an enactment on an existing right, privilege, obligation or liability etc. The normal effect of repealing a statute is to obliterate it from the statute book as completely as if it had never been passed, it must be considered as a law that never existed. But to this rule an exception is engrafted by the provisions of Section 6 -- see *Commissioner of Income Tax, Bombay City-1 Vs. Godavari Sugar Mills Ltd.*, . Whenever there is repeal of an enactment, the consequences laid down in Section 6 will follow unless a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But where the repeal is followed by fresh legislation on the same subject the court would have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

15. The line of enquiry would be as pointed out by B.K. Mukerjee, J., speaking for the court in *State of Punjab v. Mohar Singh* AIR 1955 S.C. 84 not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. The court cannot subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. The provisions of Section 6 of the General Clauses Act will

apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment.

16. We should take note of the words "unless a different intention appears". Therefore, if the repealing enactment makes a special provision regarding pending or past transactions it is the latter provision that will determine whether the right or liability arising under the repealed enactment survives or is extinguished. We find from the provisions of the Indian Copyright Act, 1957 that Section 79 as such is a special provision. As stated earlier Section 16 of the 1957 Act states that no person shall be entitled to copyright or any similar right in any work, whether published or unpublished otherwise than under and in accordance with the provisions of the Act or of any other law for the time being in force. Section 79 in sub-clauses 3, 4 and 5 details how the rights under the repealed Act should be dealt with. At the risk of repetition we would point out (1) that when the copyright did not subsist in any work immediately before the commencement of the Act (of 1957) -- the new Act -- that will not subsist on account of the Act; (2) when such right subsisted at the commencement of the Act, that will be from that time a right u/s 14 of the new Act, and naturally the provisions of the new Act will govern such rights; and (3) in regard to subsisting copyright or any right or interest in such copyright which may not come within the ambit of "copyright, right or interest" under the new Act, such right or interest will continue for the period, for which period it would have continued if the new Act had not come into force. The application of the General Clauses Act with respect to the effect of repeals will be subject to these provisions as is specifically stated in Sub-section 7 of Section 79. In this view, the provisions of the new Act should govern the copyrights over the plaint schedule books which were subsisting with the Plaintiffs when the Copyright Act of 1957 -- new Act -- came into force, and in the light of the provisions of this Act, the said copyrights subsisted till 1st January 1969 -- that is till the end of the period of fifty years from the beginning of the calendar year next following the year in which the author died.

17. In applying the provisions of the new Copyright Act to copyrights under the old Act subsisting at the commencement of the new Act, we are not really giving any retrospective operation to the new Act as such. As Lord Denman, C.J., said in *R. v. Inhabitants of St. Mary, Whitechapel* (1848) 12 Q.B. 120 "a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing." This observation of the English Judge has been quoted with approval by Patanjali Sastii, C.J., in *The Union of India Vs. Madan Gopal Kabra*, . Lord Denman said in *Anr. case R. v. Inhabitants of Christchurch* (1848) 12 Q.B. 149 "no one would class statutes of limitation or prescription as retrospective merely because the space of time which is essential for their operation may consist in part of time passed before the Act."

18. Before concluding we might also state that we do not find any substance in

the argument of the learned Counsel for the Appellant that on account of Section 23 of Act VIII of 1092 (Travancore), the first Plaintiff ceased to be the owner of the copyright. Acceptance of this argument will be ignoring Section 23(1)(a)(ii) and evidence of P.W.2 in the case.

In the result we hold that the lower court was right in the view it has taken in the matter. The judgment and decree of the lower court are confirmed and the appeal is dismissed. The Appellant will pay the costs of the Respondents.

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